

REMARKS

This response is to the non-final OA dated 12-08-2009, for having reopened for prosecution in response to the Appeal Brief. An amendment and a response are being filed herewith to this OA.

In this amendment, claims 18-21, 24-27, 29-30, and 32 have been amended.

In this OA, examiner rejects claims 18-23, 25-27, and 30 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to distinctively claim the subject matter of the invention. Examiner also rejects claims 18-32 under 35 U.S.C. 103(a) as being obvious over Showghi et al '739 in view of Meyers et al. '812. . Each of these rejections is being responded to below

35 U.S.C. 112 Rejections

Examiner's 112 rejections are for having used the clause "means for" without sufficient structure to support such a clause.

Applicant has amended these claims 18-23, 25-27 and 30 to overcome the 112 rejections by removing such means for clauses. Applicant believes these claims now comply with the 35 U.S.C. 112, second paragraph requirements.

35 U.S.C. 103(a) rejections over Showghi in view of Meyers

Examiner has rejected system claims 18-32, under 35 USC 103(a) Obviousness Rejection as being unpatentable over Showghi et al., US Patent No. 6,473,739, October 29, 2002, Remote Ordering System, in view of newly cited prior art Meyers, US patent No. 5,933,812, August 3, 1999, Portable Transaction Terminal System.

Applicant has amended independent claims 18, 24 and 30 and dependent claims as appropriate to better define the scope of the invention.

Specifically the word “separate” has been amended to “independent”; the words
5 “central system” have been amended to “central computer system” and amendments that further clarify how the payment transaction to the merchant from the customer is completed without the merchant system having the customer bankcard data.

The claim 18 is on a payment system, as in preamble, that provides privacy of
10 customer bankcard data from the merchant system which comprise (i) a restaurant bill with a service code, (ii) a wireless device of the customer that is entered service code and a payment amount and sends to the central computer system (iii) the central computer system receives data from the wireless device, processes a payment transaction with pre-placed account data of customer and pre-placed merchant POS
15 terminal data, that process a payment transaction from the customer to the merchant, and a central computer system notification of the payment to the merchant system.

The specification clearly described and identifies with references to Figure 3, the central computer system 10 as an independent computer system, independent from
20 the merchant systems 08 and merchant payment terminal 04. The central computer system 10 cannot be confused with the merchant system 08, as being part of it or not independent of it, just because the central computer system 10 has an interface with the merchant system 08 for payment authorization notification. Just like, the central computer system 10 is independent of the card processor 36 and independent of the
25 cell phone 12, even though the central computer system 10 has interfaces with the card processor 36 for payment authorizations and an interface with the cell phone 12 for originating a payment transaction.

Further Figure 4, describes the construction of the central computer system 10,
30 with description of processor and storage. The storage clearly identifies databases that store both the customer and merchant data necessary to effect a payment

transaction from customers to a large number of merchants. Merchant database 440 maintains data on the merchant and their terminal address and e-mail address for notification of the payment authorizations. Further, Figure 5, step 500 shows that the merchant opens an account with the central computer system 10. Hence, the central computer system 10 cannot, not be independent of the merchant system 08. Further Figure 4 clearly identifies central system 10 as a central computer system 10

Further, the claim language clearly states the central computer system 10 is independent of the merchant system 08 by the operation of the payment system 02, even though both the central computer system 10 and merchant system 08, just like the card processor 36, the cell phone 12 and the restaurant bill 26 are part of the of the privacy payment system 02. Hence even though the central computer system 10 is a necessary part of the payment system 02 it is independent of the merchant system 08.

Hence these amendment clearly find support in Figure 3, items 10 and 08; Figure 4, which shows the design features of the system 10 as an independent system from the merchant system 08; Figure 5, step 500, requiring the merchant to open an account with the system 10 and specification pages and lines related to the description of these features.

Neither the Showghi prior art or the newly cited Meyers art teach individually or in any combination the protection of the customer bankcard data from the merchant system. Further, neither of the prior art individually or in any combination teach elements of claim 18, 24 and 30, including an independent central computer system, a restaurant bill showing a service code with merchant identification to the central computer system, the central computer system processing a payment transaction in lieu of the merchant system, and sending by the central computer system, payment approval notification wirelessly to the wireless device of the customer and sending the payment approval notification to the merchant system.

In view of these amendments examiner's 103(a) rejection is considered moot.

Distinguishing Meyers

Meyers is a newly cited art. Analyzing Meyers first, Meyers teaches a portable payment transaction terminal for use in eating and drinking establishments that has a data entry keypad and a display on top of the terminal, has a card reader module in the terminal housing, for use for payment of the amount of the check by a guest, a docking station, a microprocessor with an operating system in the terminal for managing data entry, message display, card reading, , transaction message formatting, and storing functions for processing a card transaction and communicates a transaction data message to an external transaction terminal system for completion of transaction processing steps. The portable terminal has a docking station for communication with a transaction terminal. The distinguishing features between Meyer's portable transaction terminal and independent claims 18, 24 and 30 of this invention are:

(i) claim 18 teaches a wireless device and a wireless device of the customer, whereas Meyers teaches a wired portable terminal that is owned by the restaurant.

(ii) Claim 18 wireless device connects to a central computer system wirelessly, where the central computer system is separate and independent from the merchant computer system, whereas the Meyer's portable terminal connects by a wire to a merchant transaction terminal, which is owned by the merchant and is part of the merchant system.

(iii) Claim 18 teaches that the payment approval notification goes to the customer wireless device wirelessly, separate and independent from the payment approval notification which is sent to the merchant system, whereas, in Meyers, .the payment approval notification goes to the merchant only for record keeping and printing a receipt.

(iv) Claim 18 does not need nor require a card reader to begin a payment transaction using a customer's bankcard, whereas, the Meyer's Portable terminal requires a card reader to operate and begin a payment transaction.

(v) Claim 18 does not need nor require a printer to print the completion of the payment transaction, whereas, the Meyer's Portable terminal requires a printer to complete a payment transaction.

(vi) Claim 18 teaches a wireless device that communicates wirelessly to a central computer system, whereas, Meyers teaches a docking station for communication with a transaction terminal.

(vii) Claim 18 teaches a payment system that does not transfer customer bankcard data to the merchant terminal and merchant system, whereas Meyers teach a Portable terminal that does transfer customer bankcard data to the merchant terminal and merchant computer system.

Distinguishing Showghi

Showghi art is on remote ordering system for food and souvenir items in a sports stadium venue from a stadium seat and payment for the same using a wireless communication device.

Showghi is on remote ordering system and method using a wireless communication device, for food in a venue from a stadium seat and payment for it. For payment of the food items, Showghi uses traditional prior art methods, where the merchant system processes the payment transaction. Hence, Showghi prior art is on the convenience of remote ordering food and paying for such food from a stadium seat in a sports venue from a vendor merchant using a wireless communication device from a seat in a stadium venue.

In Showghi, different methods of payment are suggested that include, pre-registering patron bankcard data with the venue merchant at the time of entry to the venue, sending bankcard data via a customer cell phone device to the venue merchant system, or alternate forms of payment that include billing the cost of the food items to a telephone bill of the customer, where the telephone company may provide this type of payment service for small dollar amounts to a merchant.

The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004).

Examiner by equating claim terms "central computer system" and "service code" as used in the claims in light of the specification with Showghi terms "Vendor Merchant system" and "Identification code" respectively, has erred in applying the "Broadest reasonable construction" standard and as a basis for 103(a) obviousness rejection.

First, in the obviousness rejection, the examiner misconstrues and errs (i) in equating the "central computer system" of the present invention claims 18, 24 and 30 with the Showghi "vendor merchant system".

Showghi vendor merchant system has a remote control station 12, venue server 16 and order processing server 18.

Examiner misconstrues the Showghi prior art, specifically items, remote control station 12, venue server 16 and order processing 18 items as shown in Figure 1 and 2, and col.2 lines 56-67,. The Showghi items 12, 16 and 18, in Figures 1 and 2, collectively represent a "vendor merchant system" and not a "central computer system" of the present invention that is separate from a merchant system.

Specifically, Showghi item 12, is a kiosk/station where a patron can rent a wireless device and that is true for both Figures 1 and 2. When the patron rents a device at kiosk/station 12, payment arrangements are made by the patron providing debit/credit card data to the kiosk/station 12. When the patron orders food by the wireless device, either rented at the station 12 or his/her own wireless device, as shown in Showghi Figures 1 and 2, the order is routed to the venue server 16.

From Showghi, col. 4, lines 19-23, In Figure 1, the base trans receiver nodes 14 and other client work stations are networked to the local server computer 16, which maintains system records, and facilitates the overall operation of the remote ordering system. The venue server 16 receives the order and distributes the orders to the order fulfillment server 18 that are closest to the patron seat in the stadium.

From Showghi col. 6, lines 17 to 26: most venues will necessarily have several order fulfillment centers. As venues can be quite large, it would be impractical to deliver all orders from a single processing location, but to have multiple locations in a large venue in order to keep proximity to the customer, thus the route for physical delivery, reasonably minimized. To assure prompt and accurate delivery of orders, it is necessary to identify the location of the patron's seat to determine which order fulfillment center within the venue to send the order to. Hence the fulfillment server 18 receives the order from the venue server 16, to the fulfillment center 18, which is closest to the patron.

It is abundantly clear from the Showghi description of items remote control station 12, venue server 16 and order processor 18, as above, where each item performs a function of the venue merchant system and they collectively represent a merchant system, where kiosk item 12 has the task of renting the wireless devices and collecting payment data, venue server item 16 as the task of receiving the order, and distributing the order to order fulfillment center 18 closest to the patron in the venue.

Therefore the "central computer system" of present invention that is independent from the merchant system is entirely different than the Showghi "vendor merchant system" implemented in Vendor merchant servers 12, 16 and 18, as they perform an entirely different function.

Second, Examiner, in the obviousness rejection, also misconstrues Showghi "identification code" with the "service code" of the present invention claims 18, 24 and 30.

Showghi uses an identification code to specify patron's seat location in the stadium venue, where such identification code is printed on the event ticket, as in Showghi Figure 6, ticket 62 and identification code 64. When the patron

communicates to the venue merchant, the venue merchant system identifies the patron and or location of the patron in the stadium by this identification code.

In contrast, the service code of this invention, as in claim 18, 24 and 30, includes a merchant number that identifies the merchant to the central computer system that is separate from the merchant system, for retrieving merchant identification data in the central computer system for processing a payment transaction.

Hence, the identification code of Showghi is inherently different than the service code of the claims 18, 24 and 30, where the Showghi identification code as printed on the event ticket identifies the patron by the seat number, and in contrast, the service code printed on a restaurant bill in a restaurant includes a merchant number that identifies the restaurant merchant to the central computer system that is separate from the merchant system.

Third, In contrast, in the current invention, the claim group 18-23 is for protecting customer identity bankcard data from the merchant systems and thus have an entirely different scope than Showghi et al.

The amended independent claim 18 provides:

18. A payment system for restaurant merchants that provides privacy of customer bankcard data of a customer from a merchant system, comprising:

a. a restaurant bill that shows a payment amount and a service code, the service code includes a merchant number identification to a central computer system that is independent from the merchant system;

d. a wireless device of the customer, (i) is entered a data of the service code, a payment amount, and an optional tip into the device, and (ii) the device

wirelessly sends the data to the central computer system which pre-stores customer data and merchant data;

c. the central computer system has a processor (i) that identifies the customer (ii) processes a payment request from the customer to the merchant by
5 retrieving customer and merchant data and submits a payment transaction request to an existing payment authorization network (iii) receives a payment approval record from the payment authorization network (iv) wirelessly sends a payment approval notification to the customer on the wireless device and (iv) sends the payment approval notification to the merchant system, wherein the central computer
10 system in lieu of the merchant system having submitted the payment transaction request, the payment system maintains privacy of customer bankcard data from the merchant system.

The claim 18 has element (a) to (c) that are not taught by Showghi, as they
15 relate to a central computer system independent from the merchant system, a paper bill with a service code, and how the central computer system works with a customer wireless device and the service code to effect a payment to the merchant and that does not copy/transfer customer id and bankcard data to the merchant point of sale systems, as they do not process the payment transaction.

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Hence, the scope and content of prior art and the differences between the claimed invention and the prior art are such that the current invention has an entirely different scope than the prior art.

25 **Obviousness over Showghi in view of Meyers**

From Showghi abstract: A system and method for enabling patrons at large-scale spectator events at confined venues having identifiable seats utilizes conventional or special hand-held, wireless communication devices to self-order food, drink and souvenir items from remote order fulfillment locations within the
30 venue for delivery to identified seats. Hierarchical menus are provided for display of

items for purchase on the devices. A seat identification code is associated with the order when transmitted via the existing telecommunications and Internet infrastructure. Receipt of the order is acknowledged, and a confirmation code is sent upon receipt of order delivery. There is automatic electronic payment for the order charged to a patron account that is established by prearranged means.

In Showghi, as sports event attendees walk into the stadium, they may go to a vendor kiosk, where (i) they register with the vendor with their stadium section and seat number, (ii) provide a bankcard data for copying into the vendor merchant computers, and (iii) are given a customized wireless device by the vendor merchant that displays menu and enables placing an order for the selected items.

The sports patron then from their respective stadium seats, choose to order items by using the custom wireless device of the vendor. The vendor receives the order, delivers the order to the stadium seat. When the patron acknowledges on the wireless device, that the order has been satisfactorily received, the vendor merchant then charges the cost to the already provided bankcard and or account of the customer.

As an alternative, in Showghi, the customer patron may chose to use his/her own cell phone, connect to the vendor system, is presented a menu, selects the items and pays for them by providing his/her bankcard data. When the order, including the payment means such as bankcard data is received by the vendor system, it delivers the order and charges the order to customer bankcard data. The vendor computer system for accomplishing these tasks related to receiving food item orders, delivering the order to stadium seat, and processing payments has three subsystems, (i) for customer registration and handing out customized wireless devices, (ii) for tracking receiving and delivering of orders to stadium seats and (iii) for processing payments using customer bankcards with a prior art card authorization network.

Fourth, for those with Showghi and Meyers ordinary skill in the art, the current invention system and method of payment would not have been obvious, based on Ordinary Skill in the art Analysis based on KSR v. Teleflex.

5 Showghi art is on remote ordering food items from a stadium seat by a wireless device and paying for them by any number of prior art payment means common in the industry.

10 Showghi ordinary skill in the art is on remote ordering system, using any number of traditional prior art payment systems for the remote order. The current payment system is for secure payment systems that do not transfer the customer identity bankcard data to merchant systems. Hence that would not be obvious to those with Showghi ordinary skill in the art, as to those of Showghi ordinary skill in the art, the objective to protect customer id bankcard data from the merchant systems
15 themselves did not exist and is not accomplished by the Showghi art.

20 Showghi discloses a variety of vendor payment methods such as (i) turning over bankcard or bank account data at time of check in at vendor merchant kiosk, (ii) supplying bankcard data via wireless telephone at time of ordering and (iii) paying by charging on the phone bill and the like. Showghi does not disclose the method of payment where the payment can be made without turning over any customer id data including bankcard data and even telephone number data. Hence Showghi ordinary skill in the art is directed to remote ordering in a stadium and paying by any number of prior art methods and is not even close and not directed to protecting the
25 customer id data in a payment transaction.

For those with Showghi ordinary skill in the art, the problem of securing customer identity bankcard data from merchants themselves is not addressed and/or accomplished, and thus cannot be obvious.

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Hence, Showghi art does not teach privacy and or protection of the customer bankcard data from a merchant system. In contrast, the present claims 18, 24 and 30 are directed to methods and systems for the privacy protection of the bankcard data from the merchant system during a payment transaction to a restaurant merchant.

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Claim 18 teaches a paradigm shift accomplishment to paying a restaurant merchant., where the merchant does not receive customer bankcard identity data and thus does not process the payment, while still able to receive and receiving a payment approval notification of the payment from the customer's bankcard from the existing card authorization network and that would not be obvious to those with Showghi ordinary skill in the art for the reasons as above.

The distinguishing features between Showghi, remote ordering system and Meyers portable terminal and independent claims 18, 24 and 30 of this invention are:

Given these distinguishing features, claim 18 cannot be obvious Showghi and in view of Meyers, as the need to protect customer bankcard data was not in the purview of those with ordinary skill in the Showghi, remote food ordering system in a venue and Meyer's, portable transaction terminal art.

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In contrast, current invention claims 18-23 teach a payment system for payment to restaurant merchants, by a customer, on being presented a paper bill with a service code with the help of a central computer system that does not copy/transfer customer identity bankcard data to the merchant point of sale employees and computer systems.

Thus claim 18 facilitates secure payment to restaurant merchants while in the restaurant, by the restaurant customer, without transferring customer identity bankcard data to the merchant employees and merchant computer sales systems, from where the customer identity bankcard data has been subject to theft and misuse.

Claim 18 teaches a paradigm shift accomplishment to paying a restaurant merchant., where the merchant does not receive customer bankcard identity data and thus does not process the payment, while still able to receive and receiving a
5 payment approval notification of the payment from the customer's bankcard from the existing card authorization network.

This paradigm shift to paying a restaurant merchant is accomplished with the help of a central computer system, an intermediary or third party central computer
10 system, that is independent and separate from the first party, the customer and also separate from the second party the restaurant merchant, thus being a third party central computer system and a service code printed on the restaurant bill, that identifies the merchant to the central computer system, and a wireless device of the customer to be able to connect to the central computer system and send the service
15 code and the payment amount to the central computer system.

Therefore, claim 18 recites use of a central computer system that is independent and separate from the merchant systems. The central computer system pre-stores customer bankcard data and also pre-stores merchant data for restaurant
20 merchants.

For those restaurant merchants who have an account in the central computer system by having pre-stored their data in the central computer system, their point-of-sale system, either manually or electronically, is equipped to create a paper bill that
25 is presented to the customer for payment, where the paper bill has printed on it, in addition to cost of meals, tax, and total payment required, a service code. The service code contains merchant identification number, a table number and a serve number.

30 For those customer who have an account with the central computer system having pre-stored their data in the central computer system, when connect to the

central computer system on his/her web-enabled cell phone, are presented a web data form from the central computer system The customer transfers or enters the service code to the form and then enters the total dollar payment amount and an optional tip and sends the completed form to the central computer system server.

5 Graham v. Deere, governs the application of 35 USC 103(a), at US PTO. Under the four part Graham inquiry, “The underlying factual inquiries include [1] the scope and content of the prior art; [2] the differences between the claimed invention and the prior art; [3] the level of ordinary skill in the art; and [4] objective evidence of nonobviousness, including commercial success, copying, and long-felt need.” State
10 Contr. & Eng'g Corp. v. Condotte America, Inc., 346 F.3d 1057, 1068 (Fed. Cir. 2003), citing Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966).

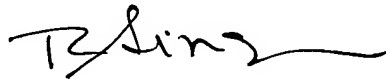
Appellant submits, that under factual inquiries [1] that the scope and content of prior art and [2] the differences between the claims of this invention and prior art is such that an obviousness rejection has no grounds. In view of these arguments,
15 claim 18 is not obvious over the Showghi in view of Meyers. Dependent claims 19-23 are likewise not obvious over the same prior art. Therefore, the obviousness rejection fails the Graham v. Deere test.

CONCLUSION

In conclusion, Applicant respectfully asserts that claims 18 to 32 are patentable for the reasons set forth above, and that the application is now in a condition for allowance. Accordingly, an early notice of allowance is respectfully requested. The Examiner is requested to call the undersigned at 310-540-4095 for any reason that would advance the instant application to issue.

Dated this the 27th day of February, 2010

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